

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 30, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2642

Cir. Ct. No. 2012SC23193

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

JILL HOLLANDER,

PLAINTIFF-APPELLANT,

V.

LYNNE WEGMAN,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: MARY M. KUHNMUENCH, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Jill Hollander appeals a judgment of the small claims court awarding ownership of her deceased mother's dog to Lynne Wegman. For the reasons that follow, we affirm the small claims court.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12).

BACKGROUND

¶2 On July 18, 2012, Jill Hollander filed a small claims replevin action against Lynne Wegman, *pro se*, for the return of a dog that belonged to Jill's late mother, Jane.² Both Jill and Wegman testified at a trial on the issue. Based on their testimony, the small claims court found the following facts undisputed.

¶3 At the time of Jane Hollander's death, on June 27, 2010, she owned a Bearded Collie mix dog named Olive. Prior to her death, Jane determined that upon her death she would leave the dog either to her daughter, Jill, a friend named Julie, or Wegman, a close friend and neighbor. Julie opted not to take ownership of the dog, leaving Jill and Wegman as Jane's options.

¶4 It is also undisputed that at some point before her death, Jane told Jill that she (Jane) wanted Jill to have the dog. Jill told Jane that she was unable to care for the dog at the time because her living arrangements were not suitable for the specific care Jane required the dog to have. Jill believed the conversation to imply that she would eventually obtain ownership of the dog when she could provide the necessary care. Jane then gave the dog to Wegman, with the understanding that Wegman would provide the dog with the specific care Jane required. Two months after receiving the dog, Wegman gave the dog to her daughter in Iowa.

All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² The small claims court noted that multiple issues concerning the estate of Jane Hollander were not properly before it and advised the plaintiff's counsel to amend the caption of this case to reflect its status as a small claims action, not an action in probate. As best as we can tell, no amendment was ever made. Therefore, we have directed the Clerk of the Court of Appeals to amend the caption accordingly.

¶5 The small claims court admonished Wegman for “betray[ing] [Jane’s] trust,” by giving the dog away so soon after Jane’s death, but ultimately determined that Jill did not meet her burden of proving that the dog was given to her. Rather, the small claims court found that the dog was entrusted to Wegman. This appeal follows.

DISCUSSION

¶6 In a return of property action, i.e., a replevin, the plaintiff bears the burden of proving ownership. *See* WIS. STAT. § 810.02; *see also First Nat’l Bank of Glendale v. Sheriff of Milwaukee Cnty.*, 34 Wis. 2d 535, 538, 149 N.W.2d 548 (1967). Jill argues that there was no legal basis for the small claims court to conclude that Jane gave the dog to Wegman. We disagree.

¶7 Because there were no documents on the record specifying who was to receive ownership of the dog, the small claims court relied upon the testimony of Jill, Wegman, and Wegman’s husband to make its findings of fact. We review the record in the light most favorable to the small claims court’s findings to determine whether the findings are clearly erroneous. *See Rohde-Giovanni v. Baumgart*, 2003 WI App 136, ¶18, 266 Wis. 2d 339, 667 N.W.2d 718. “When we undertake to determine whether a finding is clearly erroneous, rejection is not warranted merely because there is evidence in the record to support a contrary finding. The contrary evidence, rather, must constitute the great weight and clear preponderance of the evidence.” *See id.* (internal citation omitted). The credibility of witnesses and the weight to be attached to that evidence are matters uniquely within the province of the small claims court when it acts as the finder of fact. *See Global Steel Prods. Corp. v. Ecklund Carriers, Inc.*, 2002 WI App 91,

¶10, 253 Wis. 2d 588, 644 N.W.2d 269. Applying these standards here, we reject Jill’s arguments.

¶8 The small claims court found that Jane did, indeed, give the dog to Wegman. Wegman acknowledged that Jane asked Jill to take ownership of the dog, but chose Wegman after Jill stated that she could not care for the dog. Wegman testified that Jane gave her the dog in the presence of Wegman’s husband, taught Wegman how to walk the dog, and described specific reading materials for Wegman to read concerning the dog’s care. The court described Jane’s decision to give the dog to Wegman as a “sigh of relief” after learning that Jill—Jane’s first choice for ownership of the dog—could not care for the dog at that time. Although the small claims court admonished Wegman’s behavior, Wegman’s testimony was substantiated by Wegman’s husband, who was sequestered during Wegman’s testimony. The court’s factual determinations are supported by the record, and therefore, not clearly erroneous. *See Phelps v. Physicians Ins. Co. of Wis.*, 2009 WI 74, ¶39, 319 Wis. 2d 1, 768 N.W.2d 615.

¶9 For the foregoing reasons we affirm the small claims court.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

